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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Mindy Zommick,

Plaintiff,

v.

Lewis Construction Company LLC, an  
Arizona limited liability company; Chad  
Lewis and Jane Doe Lewis, husband and  
wife; and Brandin Lewis and Jane Doe  
Lewis II, husband and wife,

Defendants.

Case No.: CV-23-00636-PHX-DJH

**MOTION FOR LEAVE TO FILE  
THIRD-PARTY COMPLAINT**

(Oral Argument Requested)

(Assigned to the Hon.  
Diane J. Humetewa)

Pursuant to Fed.R.Civ.P. 14(a) and 15(a), Defendant Lewis Construction Company LLC (“Lewis Construction”), through undersigned counsel, hereby respectfully requests that the Court grant them leave to implead non-parties Leaders Communications Inc. (“LCI”), SkySpy LLC (“SkySpy”), and Michael Kelly (“Kelly”) (collectively, the “Third-Party Defendants”) as third-party defendants to this Action and serve on them the summons and third-party complaint set forth in **Exhibit “A”** and **Exhibit “B”** of this Motion. This Motion is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Brief Background.**

On April 15, 2023, Plaintiff filed her Complaint against Defendants and alleged wage and overtime claims pursuant to federal law and Arizona state law. [Doc. 1]. On July

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6, 2023, Lewis Construction and Brandin Lewis filed their Answer to the Complaint [Doc. 9], and the remaining Defendants filed their Answer on September 18, 2023. [Doc. 21]. More than ten days have passed since Defendants filed their respective answers; therefore, Lewis Construction moves for leave to file a third-party complaint for the relief requested herein. As specified above, Lewis Construction seeks leave to file a third-party complaint against the Third-Party Defendants for indemnification and contribution related to all or part of Plaintiff's claims against Defendant Lewis Construction. Should the Court find that Plaintiff's allegations are proven true, the third-party claims are intended to shift liability to the Third-Party Defendants for all or some of the alleged damages sustained by Plaintiff.

Discovery is still ongoing in this matter and no trial date has been set. As a result, no party will be prejudiced by the proposed third-party complaint. Lewis Construction requested a stipulation from Plaintiff who declined, necessitating this Motion.

## II. Legal Argument.

A defendant may implead "...a nonparty who is or may be liable to it for all or part of the claim against it." Fed.R.Civ.P. 14(a)(1); *see also Helferich Patent Licensing, LLC v. Legacy Partners, LLC*, 917 F. Supp. 2d. 985, 988 (D. Ariz. 2013). In other words, "...a party can assert a third-party claim where a third-party defendant's liability to the third-party plaintiff is dependent on the outcome of the main claim and is secondary or derivative thereto." *Helferich*, 917 F. Supp. 2d. at 988 (citing *Stewart v. Am. Int'l Oil & Gas Co.*, 845 F.2d 196, 199 (9<sup>th</sup> Cir. 1988)). Likewise, leave to amend a pleading should be freely given where justice requires. Fed.R.Civ.P. 15(a)(2). The Court possesses discretion to "determine[] the propriety of a motion to amend by ascertaining the presence of any four factors: bad faith, undue delay, prejudice to the opposing party, and/or futility." *Serra v. Lappin*, 600 F.3d 1191 (9<sup>th</sup> Cir. 2010) (citing *William O. Gilley Enters. v. Atl. Richfield Co.*, 588 F.3d 659, 669 n. 8 (9<sup>th</sup> Cir. 2009) (quoting *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 890 (9<sup>th</sup> Cir. 1999)).

1 As demonstrated in Lewis Construction's Third-Party Complaint, Plaintiff's  
2 allegations, if proven true, would subject Lewis Construction and Third-Party Defendants  
3 to liability for all or part of Plaintiff's against Lewis Construction. Indeed, SkySpy and  
4 Kelly's potential liability is dependent on the outcome of the main claim, i.e., which party  
5 is directly responsible for compensating Plaintiff. Moreover, as the Third-Party Defendants  
6 were responsible for ensuring Plaintiff was paid in a timely manner, Lewis Construction's  
7 third-party claim is derivative to Plaintiff's claim via indemnification and contribution.

8 The Court should also grant the Motion give Fed.R.Civ.P. 15(a)(2)'s liberal  
9 standard. The Motion is not brought for the purposes of bad faith or undue delay, because  
10 the Motion is contemplated under the Federal Rules of Civil Procedure and this matter is  
11 still early in discovery. Given the procedural posture of the case, Plaintiff will not suffer  
12 any undue prejudice from Lewis Construction impleading the Third-Party Defendants.  
13 Lastly, Lewis Construction has pled cognizable claims against the Third-Party Defendants;  
14 therefore, the Motion and Third-Party Complaint are not futile.

15 **III. CONCLUSION**

16 There exists non-parties that are or may be liable, in whole or in part, for Plaintiff's  
17 claims against Lewis Construction, and none of the four factors pertaining to amending a  
18 party's pleading are present. For the foregoing reasons, the Court should grant the present  
19 Motion and grant Lewis Construction leave to file their Third-Party Complaint against LCI,  
20 SkySpy, and Kelly.

1                   **RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of November 2023.

2                                   **ZAZUETA LAW, PLLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 6, 2023, I electronically submitted the attached document to the Clerk's office using EMF/ECF system for filing and electronically served the same to the following recipient:

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